

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION**

WILLIAM PATRICK KENNEY and  
SANDRA LOUISE KENNEY, h/w,  
and  
THOMAS ANTHONY BAUGH and  
JEAN M. BAUGH, h/w,

Plaintiffs,

v.

NATIONAL FOOTBALL LEAGUE,  
COMMISSIONER ROGER S. GOODELL,  
and  
NFL PROPERTIES LLC,

Defendants.

Case No. 4:13-cv-00018

**MEMORANDUM OF LAW  
IN SUPPORT OF JOINT MOTION OF ALL PARTIES  
TO STAY THE CASE**

Plaintiffs William Patrick Kenney, Sandra Louise Kenney, Thomas Anthony Baugh and Jean M. Baugh (“Plaintiffs”) and Defendants the National Football League, Commissioner Roger S. Goodell and NFL Properties LLC (the “NFL Defendants”) (collectively, the “Parties”), through undersigned counsel, jointly submit their Memorandum of Law in support of their Joint Motion of All Parties to Stay the Case.

The Parties jointly consent to and request that the Court enter an Order in the form attached hereto that stays all proceedings in this Case and expressly preserves plaintiffs’ rights pending the stay. The Parties agree that the stay should remain in place pending a decision by the Judicial Panel on Multidistrict Litigation (the “JPML”) on whether this Case should be transferred to the Eastern District of Pennsylvania (the “MDL Court”) as part of the *In re*

*National Football League Players' Concussion Injury Litigation*, MDL No. 2323 (the "MDL").

This Case, like many cases filed across the country, involves allegations against the NFL Defendants relating to head injury allegedly sustained while playing professional football.

On January 14, 2013, the NFL notified the JPML, pursuant to J.P.M.L. Rule 7.1(a) that it considered this case a potential "tag-along" action to the MDL. While the Panel is considering whether to transfer this case, the Parties respectfully request that this Court stay all proceedings to conserve judicial resources and the resources of the Parties.

The Court's power to stay is well-established. "[W]hen similar actions, either class or individual, are proceeding before several courts, one or more of the tribunals may stay the proceedings before it pending the outcome of the other actions." C. Wright, A. Miller & M. Kane, 7B FEDERAL PRACTICE AND PROCEDURE § 1792 (3d Ed. 2005). The MANUAL FOR COMPLEX LITIGATION advises that "[a] stay pending the Panel's decision can increase efficiency and consistency, particularly when the [potential] transferor court believes that a transfer order is likely and when pending motions raise issues likely to be raised in other cases as well." Courts routinely grant stays under similar circumstances. *See, e.g., Buie v. Blue Cross & Blue Shield of Kan. City, Inc.*, No. 05-cv-0534 (FJG), 2005 WL 2218461, at \*2 (W.D. Mo. Sep. 13, 2005) (staying case pending a transfer by the JPML); *Emerson v. Lincoln Elec. Holdings, Inc.*, No. 09-cv-6004 (GAF), 2009 WL 690181, at \*2 (W.D. Mo. Mar. 12, 2009) (staying case pending a transfer by the JPML); *Johnson v. KFC Corp.*, No. 07-cv-0416 (HFS), 2007 WL 3376750, at \*3 (W.D. Mo. Nov. 7, 2007) (same); *see also Bledsoe v. Janssen Pharm.*, No. 05-cv-2330, 2006 WL 335450, at \*1 (E.D. Mo. Feb. 13, 2006) (same).

For these reasons, the Parties respectfully request that the Court stay this Case pending the Panel's decision on whether to transfer the Case. The Parties also respectfully request that

the Court's Order expressly state that the Plaintiffs' have preserved all of their rights, including the right to file a motion for remand if and when there is a determination that the Case must proceed in Missouri, and the stay is no longer necessary.

For all of the foregoing reasons, the Parties respectfully request that the Court stay all proceedings in this action and enter the Parties proposed form of Order, attached hereto.

Respectfully submitted this 15th day of January 2013.

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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 15, 2013, a copy of the above and foregoing was electronically filed with the Clerk of Court for the Western District of Missouri using the CM/ECF system which will generate and send a notice of electronic filing to the following counsel of record:

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